



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 13, 1996

Mr. Bill Grossenbacher
Division Director
Texas Workforce Commission
101 E. 15th Street
Austin, Texas 78778-0001

OR96-0695

Dear Mr. Grossenbacher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39958.

The Texas Workforce Commission (the "commission") received the following request for information: For each year of the [Tuition Protection] Fund's existence, all documents submitted by teach-out schools to support the schools' claims for reimbursement for teach-out expenses. You believe that social security numbers and student information contained in the requested records may be excepted from disclosure under section 552.101 of the Government Code as information deemed confidential by federal law.

It appears that portions of the requested records may be excepted from disclosure under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or section 552.114 of the Government Code. This office has recently issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to that exception, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

We have not been provided with information to show whether the commission falls within the definition of an "educational agency or institution."¹ However, if the commission is not an "educational agency or institution" under FERPA, we assume that the following FERPA provisions are applicable to the commission in this situation:

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

20 U.S.C. § 1232g(b)(4)(B)(5). The "proviso in paragraph (3)" reads as follows:

(3) Nothing contained in this section shall preclude authorized representatives of . . . State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personally identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

20 U.S.C. § 1232g(b)(1)(J)(i). Regardless of whether the commission is an "educational agency or institution" or the commission has the records at issue for purposes of an audit, we think that Open Records Decision No. 634 (1995) is determinative in this situation. We have enclosed a copy of that decision for your consideration.

We remind you that Open Records Decision No. 634 (1995) applies only to "education records" under FERPA. "Education records" are records that:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

¹An educational agency or institution is defined as "any public or private agency or institution which is the recipient of funds under any applicable program." 20 U.S.C. § 1232g(a)(3).

20 U.S.C. § 1232g(a)(4)(A). *see also* Open Records Decision Nos. 462 (1987), 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).² We have marked a representative sample of the requested documents to indicate which types of information are protected under FERPA.³ If you have questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office. *See* Open Records Decision No. 634 (1995) at 4, n.6, 8.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 39958

Enclosures: Marked documents
Open Records Decision No. 634 (1995)

cc: Mr. James Laird
RR 2, Box 129A
Smithville, Texas 78957
(w/Open Records Decision No. 634 (1995))

²But *see* 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student's education records). *See also* Open Records Decision No. 431 (1985) (Open Records Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student).

³Please note that in the future you need not seek an attorney general decision as to whether you may withhold from public disclosure information that is protected under FERPA. Open Records Decision No. 634 (1995) at 10.